

# Washington Governor Seeks New Taxes as a Court Order Looms

By [KIRK JOHNSON](#)

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Gov. Jay Inslee of Washington has proposed \$1.4 billion in new tax revenue, much of which would be funneled to education. Credit Ted S. Warren/Associated Press

OLYMPIA, Wash. — Gov. Jay Inslee, a Democrat, stepped to the rostrum in the ornate House chamber of the Capitol here on Tuesday and called for the biggest increase in new tax dollars in state history.

“The time of recession and hollowing out is behind us,” Mr. Inslee said in his State of the State address to lawmakers. “It is now time for reinvestment.”

Mr. Inslee is seeking \$1.4 billion in new revenue as part of a nearly \$39 billion budget plan that includes a new capital gains tax on the wealthy and a cap-and-trade carbon tax system he said would also reduce climate-altering pollution.

The extra money, along with a projected \$3 billion surge in revenue from existing taxes in a recovering economy, would be funneled heavily to one line item: education.

Though Mr. Inslee, a former congressman who was elected governor in 2012, may well favor more money for schools in any case, seven ominous words are driving his tax-and-spending plan: “sanctions and other remedial measures as necessary.”

That is the language of the Washington Supreme Court, the state’s highest judicial body, which last fall found the state in contempt for failing to outline a schedule, in dates and dollar amounts, to fix years of underfunding of schools. The justices issued a contempt order in September, after many failed promises by the Legislature, but held off enforcement until the end of the 2015 legislative session, which began Monday and is to last for 105 days.

Imposing a penalty, if it comes to that, could well be a first in American politics, according to legal scholars who could not remember another example of a state high court holding an equal branch of government in contempt. No one is certain what might happen. The court was vague about what it might do, leaving just about anything on the table, and nobody can think of any relevant precedent. The court could, for example, order money deposited from state general funds into school accounts, legal scholars said, or impose fines or do something else altogether.

“I’m still left wondering what a court can do to sanction a coequal branch of government where the sin ultimately boils down to the failure to vote for positive social and economic policy that satisfies the court,” said Scott R. Bauries, a law professor at the University of Kentucky who studies state constitutions and education.

Equally perplexing, he said, is that because the federal courts do not police disputes between branches of state government over the separation of powers, any challenge to the court’s action could be appealed to only the justices themselves, who would be asked to second-guess whether they had acted within constitutional bounds.

“This order is pretty strongly worded,” Professor Bauries said.

The Legislature is divided but is already showing resistance to Mr. Inslee’s pleas. Republicans strengthened their control of the state Senate after last fall’s election, while Democrats retained a majority in the House. On Monday, less than 24 hours before the governor’s speech, the Senate changed its own rules to make any new tax harder to pass — requiring two-thirds approval of the chamber instead of a simple majority.

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“This will make it much more difficult for Gov. Jay Inslee to pass his misguided proposals,” said Senator Michael Baumgartner, a Republican who co-sponsored the rule change. “By requiring broad support for taxes in the Legislature, we ensure that taxes will not be our first resort.”

Mr. Inslee's tax package would be the largest ever in dollar terms, but in terms of percentage increase, some tax hikes have been much bigger. The state's top education official, Randy Dorn, said he was braced for disaster. He said that even Mr. Inslee's ambitious plans, were they to pass intact, might not satisfy a court that was clearly exasperated and tired of waiting.

"That, to me, is going to produce a constitutional crisis," he said.

Court orders on education are common in state politics. Particularly since the 1990s, lawsuits have focused on state constitutions, which vary greatly in their requirements for education. Sixteen states, for example, simply require a system of free public schools, according to the National Conference of State Legislatures. Washington's constitution is one of the most stringent — one of only eight that call education a "fundamental," "primary" or "paramount" state obligation.

That constitutional wording greatly strengthens the court's hand in its standoff with the Legislature, said Tom Ahearne, a Seattle lawyer who represented the parents, school districts and education groups [whose lawsuit](#) led to the contempt order. "Ours is the most distinctive, period — the strongest, period," Mr. Ahearne said.

How much new education spending would satisfy the court presents its own tangled set of questions. Some lawmakers say an increase in the range of \$1 billion to \$2 billion in the current budget would meet the court's demands, while others cited higher or lower numbers.

Representative Norma Smith, a Republican who spoke for her party in a taped response to Mr. Inslee's speech, said things were going so well for the state, with new growth in jobs and revenue, that tax increases might not be necessary at all.

"Yes, we must rectify the failure of the past," she said. "But putting more money into the system must not be our only response."

Mr. Inslee, in his speech, said that more money was not the only goal. Washington's tax system — with no income tax and a heavy reliance on sales taxes — is also deeply unfair, he said, because lower income people pay a higher proportion of their income than do richer residents. His proposal for a 7 percent capital gains tax would affect less than 1 percent of the state's taxpayers, he said.

"We can work toward a fairer tax system, and we should," Mr. Inslee said.